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GERMAN LAW AND LEGISLATION

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GERMAN LAW AND LEGISLATION

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When the National Socialist Government came into office, on January 30, 1933, it was confronted with widespread chaos and confusion in the social, economic and political life of the nation. A similar state of affairs existed in the legal sphere and in the administration of justice. The situation was too critical to allow of any time being lost in dealing with it.

The first step taken was to put an end to the manner in which Parliament had hitherto functioned. Even in imperial times, before the War, this institution had proved itself inefficient. The republican parliament however, which followed the War, turned out not only inefficient but positively detrimental to the interests of the country. This republican Reichstag had been organized according to the principles laid down in the Weimar Constitution of 1919. But that Constitution had been drawn up by a Conference of theoretical jurists and politicians who were quite out of touch with the practical needs of the nation. It was therefore out of harmony with German historical tradition, with German mentality and the ethical constitution of the German nation. Moreover, the constitutional laws enacted at Weimar were formulated under the aegis of the so-called Peace Treaties and as such they naturally failed to arouse popular opinion in favour of the new Constitution. In the final crisis of 1932/33 the legislative body operating under this Constitution, that is to say, the Reichstag, absolutely failed to function. Parliamentary legislation was increasingly superseded by emergency decrees issued by the President of the Reich. In the year 1931 35 laws were passed and 42 emergency decrees were issued. In 1932 only 5 laws were passed, but 60 decrees were issued. This system of emergency decrees could not furnish a permanent basis for the government of the country.

Just as in the case of the State, the local administrations were also unable to cope with the difficulties that confronted them. Especially the municipalities were threatened with disaster, owing to the economic conditions which resulted directly from the political chaos. In addition to all this, the unfortunate dualism between the Reich and the governments of the federative states[1]) led to the development of an administrative apparatus which was becoming more and more disjointed.

The administration of justice failed to check the increasing volume of crimes and misdemeanours. In spite of the growing leniency towards the criminal, which was due to the prevailing laxity of moral ideas, the number of persons accused of larceny in Berlin rose from 32,452 in 1926 to 52,231 in 1932. The number accused of burglary rose from 18,673 to 36,729 within the same period. And the number of cases of robbery with murder from 2 to 7. The damage resulting from theft amounted to 16.5 million marks in 1926. In 1932 it amounted to 32 millions. The increase in acquittals, which offended the popular sense of justice, was an outstanding proof that the existing criminal code was inadequate to deal effectively with new developments in general delinquency.

The laws in regard to labour, which were based on the idea of a permanent conflict of interests between employers and employed, were unable to maintain industrial peace, which is so necessary to national existence. The increase in unemployment heightened the existing tension to a point where it was becoming intolerable.

The sources of the nation's food supplies were in a precarious condition. The farmers were heavily in debt and, moreover, their farms were difficult to work profitably owing to the dividing up of the land according to the hereditary system.

Furthermore, a large class of aliens, namely Jews, had migrated to Germany from the East, especially during the War, and had gained a decisive influence in politics, law, the learned professions, education and in control of the cultural organizations. Although the Jews represented only one percent, of the whole population, they had secured a footing in nearly all the key positions in public life.

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[1]) The expression „federative states" is used several times throughout this article and much of the recent constitutional reform affects the position of these states. As the average outsider has been accustomed to look on Germany as a political unit, it may be well to explain that before the War Germany was a Confederate League bearing the name: German Empire, under the hereditary presidency of the King of Prussia, who bore the title: „German Emperor". In 1918 the kings and princes of the various federative states abdicated; but the Weimar Constitution retained the principal federative states in the form of republics, with their independent government and parliaments. These were: Prussia, Bavaria, Saxony, Württemberg, and the minor states: Baden, Thuringia, Hessen, Mecklenburg, Oldenburg, Brunswick, Anhalt, Lippe, Schaumburg-Lippe. In addition to these there were Free Hanse Cities of Lübeck, Bremen and Hamburg.

The political transformation which took place in 1933 brought with it the introduction of many practical reforms in the realm of law. The threatening collapse proved clearly that the existing laws were inadequate to the vital needs of the nation and that a change in juridical practice, or the passing of individual measures or supplementary laws, would have been insufficient to eliminate such profound defects. The situation could be effectively remedied only by creating an entirely new order, based on the new political principles which the National Revolution had introduced into national life.

But a new and permanent system could not be created at once. Therefore the Reich Government did not hurriedly draw up new codes; but for the time being it had to content itself with introducing supplementary laws which would clear the way for further developments and prepare the ground for a future systematic code. The laws to which the legislator would give final form would have to arise from the life of the nation itself. The Academy of German Law was set up as a public corporation and within the framework of this organization a number of committees are doing the preliminary juristic work which is necessary before the new codes can be finally shaped. At the present time the Academy is principally engaged on that section of the code which will establish and guarantee the position of the family as an integrant unit in the national community.

The whole body of new legislation is to be inspired by the main ideas which dominate the German mind today: namely, the idea of Leadership, the idea of the People, and the idea of the Community of the People.

In order to understand what is the basis of the new legislation one must have a clear grasp of what the Germans mean today when they speak of the Community of the People, the *Volksgemeinschaft*. This idea of the people is based on the fact that their members have a homogenous national character. When great multitudes act together, conscious of their historical unity and determined to pursue the fulfilment of one mission as a national unit, then they are a political unit also. Of this political unit those who are its leaders form an integrant part. All the members form one corporation which is called the *Volksgemeinschaft*, literally, Folk Community. Now the laws that govern the Folk Community emerge from the inner spiritual, political and material necessities which have developed through a common historical

experience. Therefore in the National Socialist sense law is not the expression of the State's authority, to which the people must submit as a passive and inert mass. In harmony with the concept of the Folk Community, law is part of the life of the people. The legislator draws out and gives organic expression to the sense of what is just and unjust, the feeling for what is good and what is evil, which is inherent in the soul of the people. Therefore the starting point of the National Socialist conception of law is the people, not the State. The task of the State is to see that the law is carried out.

The legal system which was introduced into Germany towards the close of the middle ages was based on the principles of Roman jurisprudence. These principles were revived and reformulated in the nineteenth century. They were entirely foreign to German traditions and they proved a perpetual hindrance to the development of a uniform system of German law. The German people have not a traditional legal system such as that through which the Anglo-Saxon people have found expression for their inner sense of justice and which forms the foundation of all their legal ideas. In many spheres of German life the introduction of a system foreign to the nature of the people separated the operation of the law from the naturally developing life of the people. The legislative efforts made by the Second Empire ever since 1871 failed to close the breach between the legal instincts of the people, developed out of their traditions, and the ideas of learned jurists. The great work of codification carried out under the Second Empire was done by men who had been trained in the ideas of Roman law. It is a well known fact that this code was soon shown to need reform; and yet all attempts to improve it have failed.

One special factor that played a large part in bringing about an estrangement between the laws and the natural legal instincts of the people was the dominant position which the Jews acquired in the legal profession. In Berlin alone 1835 or 54% of the lawyers practising in 1932 were of Jewish extraction. In interpreting and applying the German law they were guided by the legal ideas of their own race. The difference between the Jewish and German ideas of law is indicated by the fact that up to the nineteenth century the Jews received special treatment in the courts in view of their different notion of what was legally right and wrong. Special forms of oath were drawn up for them and they could not be punished for receiving stolen goods. The Law of September 15, 1935 put a stop to the further predominance of the Jews; but there

are still many Jewish lawyers in Berlin. Out of the total of number of lawyers 943 or 32,6% were Jews in 1937.

In the National Socialist State the Führer is the lawgiver; but he himself is an integral part of the Folk Community. And so the National Socialist law follows a different principle from that on which the status of a dictatorship is legally based. In order to maintain the rule of the dictator external compulsion is necessary; but leadership depends on the unconditional authority of conviction. Where there is compulsion the individual feels that he has no responsibility to the community or to the future, but it is just on this feeling of individual responsibility that the National Socialist law is based. The highest honour and the highest ideal consist in the service of the community. Honour and internal as well as external freedom are essential to the existence of the community.

Therefore, as the ideal of the Folk Community forms the basic principle of National Socialism, a legal form must be found which expresses that principle and gives each German his place as a constituent part of the national community. The individual does not stand isolated over against the community. A community must be made up of members. These members are not the mere objects of its rule or social institutions. Each represents the community in himself and has his field of activity within it. The total activity of the community depends on the strength and achievements of the single members. Therefore the member is not in the positon of a subject who has no rights on his own account, as is the case in the absolutist State. The rights of the community are his rights and on him depend its honour and freedom. But he occupies this position for the sake of the community and not for the sake of the individual. It implies political duties as well as political rights.

The National Socialist Revolution did not merely mean the external collapse of the existing State. It implied also a change in the fundamental ideas of the State as such and its laws. Therefore we should be mistaken if we regarded it merely as a revolt against the evils, which existed in 1933. The National Socialist law rather represents something essentially new, which is capable of infusing a new life into all traditional forms. Führer and people, Folk Community and German citizen, constitute the essential elements of the National Socialist conception of law. And the purpose of the new laws is to give form to that conception.

STAAT UND VOLK

The National Socialist Revolution was not, like other revolutions, carried out by a breach of the constitution. The constitutional transition from the Weimar Republic to the National Socialist State was given its constitutional form in the law establishing the Leadership of the Reich, which was passed on March 24, 1933. On that date, and by a majority of 441 to 93, the constitutionally elected Reichstag transferred the leadership of the Reich to the Reich Government. That meant the abandonment of the existing method of legislation. In passing this law the Reichstag was acting within its rights as defined by the Weimar Constitution; for the latter put no restriction on the ambit of such laws as might be enacted for the purpose of altering the Constitution. The stipulated majority had been attained. The forms which the Constitution required had been observed. Through this law the Reichstag declared its approval of the government proclamation issued by the Reich Chancellor. This proclamation laid down the lines along which the work of reconstruction, within and without, was to proceed. But the political significance of the law goes much further. It acknowledges the leadership as invested in the community of the German people. Therewith was abolished the division which the variety of political parties had caused in the life of the nation. The Government of the Reich was entrusted with the task of carrying out the new reform. By assuming the legislative function the Government did not thereby introduce a transitory state of emergency which would eventually be terminated by the restoration of the old state of affairs. Once and for all the authority of the leaders of the State was recognized, and in their hands the legislative and executive powers were combined.

It is not without importance for the development of the legislative activities which followed its assumption of power that the National Socialist Revolution was accomplished without any violent external breach of the law, although it profoundly influenced the life of the people as a whole and also that of the individual German. Up to the present day the Weimar Constitution has not been formally abolished. But when the revolution became a fact the Weimar Constitution lost all practical importance as the basis of the State, since the national life had burst its forms and was seeking new forms of legal expression. The principles of the Weimar Republic would be in

conflict with the national constitution in which the German people live to-day, although as yet no written constitution has been drawn up. The Reich Government did not hold it to be their task to issue a new constitution. The first foundations have been laid and therewith the ground has been made ready for a new legal structure which will be a living embodiment of the national life.

Apart from the law regarding the Reich Leadership the following laws which, on account of their fundamental importance, may be regarded as constitutional laws have been passed: The Coordination Acts of March 31 and April 7, 1933, the Plebiscite Act of July 14, 1933, the Act establishing the unity of Party with State of December 1, 1933, the Succession Act of August 1, 1934, the Regional Governors and Local Government Act of January 30, 1933, the Fighting Services Act of March 16, 1935, the Reich Flag Act, the Citizenship of the Reich Act, and the Act for the Protection of German Blood and German Honour of September 15, 1935, the Act reuniting Austria and Germany of March 13, 1938.

From this list one can see that the centre of gravity of the State does not lie in its external structure and in its position in relation to something outside of the State itself. The State is determined rather by the internal relationship of the people, whom it is meant to serve. State, Party, Economic System and Judicial System, are only secondary factors which exist for the service of the people. This is clearly shown in the Führer's decree of August 8, 1934, in which he called upon the Reich Minister of the Interior to prepare a referendum on the decision of the Government to appoint the Führer President of the Reich.

"I desire that the German People should give their explicit approval to the decision of the Cabinet whereby the functions of the former Reich President were transferred to me and therewith combined with those of the office of Reich Chancellor. Absolutely convinced as I am that all power in the State proceeds from the People, I request that the decision of the Cabinet, with any additions necessary to be made, should be presented to the German People without delay for them to express their opinion on these measures in a free plebiscite."

This relation between People and State shows how false it is to characterise the National Socialist State as a totalitarian State. A State which itself works for an end and is not an end in itself cannot in any sense be called a totalitarian State, in which the centre of gravity has been

shifted to the disadvantage of the individual. In such a case the defenceless individual is confronted by an all-powerful State. But the National Socialist State exists to serve the People and therewith each member. Each German is a member of the whole and therewith called upon to cooperate in the life of the State. The term, totality, properly applies to the National Socialist *Weltanschauung*, which is embodied in the whole people and activates every branch of national existence.

The most important of the constitutional laws are those designed to maintain the purity of German blood. The word *People* does not mean for National Socialism the total number of German subjects, nor does it mean merely all those with a common history. The people is a political factor which has its own being, and in order to preserve this being its blood must be kept pure and healthy. The foundation of the national being is race. It would be a waste of time to argue about the constituents of race. Races are the stones with which God has built up mankind and our task can only be to preserve them as such. This is the aim of the Act for the Protection of German Blood and German Honour, which was passed by the Reichstag on September 15, 1935. The Act ensures that the German people shall be clearly separated from the Jewish people living on the same national territory. This separation is a strict one, and its results have often seemed to bear harshly on the individual. But only a complete separation in life and law can make it tolerable for two peoples to live together in the same territory. This is to be attained by preventing every kind of blood mixture. Only if there is a healthy mutual feeling that the other race is foreign, can hatred and contempt of the one race by the other be avoided. This Act secures for the future the necessary biological unity of the German people. The Reich Citizen Act of September 15, 1935, supplements the other act in the political sphere. It makes a distinction within the State between German citizens, who are the representatives and foundation of its greatness, and those persons who merely reside in the State for their own profit. "Only those who are nationals can be citizens of the State. They alone are nationals who are of German blood, no distinction of religious creed being made. Therefore no Jew can be looked upon as a national." (Party Programme, Point 4). Reich Citizens alone possess full political rights. They alone can exercise the franchise, can occupy official positions, can take part in the Reichstag elections or plebiscites. Only they can become members of the Reichstag or of a State council,

a provincial council, town council or district council, or may become civil servants or hold honorary public office. A condition for the granting of these rights is that such persons should be capable and willing loyally to serve the German people and the German Reich.

When this distinction had been made between citizens of the Reich, whose rights are granted to them in the form of a certificate of Reich Citizenship, and Reich subjects, who merely belong to the German State as protective units, it became necessary to regulate the position of those who are only partly of Jewish blood and are at present domiciled in Germany. The lot of such persons, who stand between two essentially different races, is especially difficult and has been the subject of much discussion. To solve the question it was necessary to make far-reaching concessions. These consisted in laying down the rule that all those who have less than three Jewish grandparents and do not declare their allegiance to the Jewish people should not count as Jews and should be allowed under certain circumstances to be absorbed into the German nation. Only those subjects who are descended from three or four Jewish grandparents count as Jews. Subjects who have two Jewish grandparents can get the permission to marry persons of German blood. They and the subject who only has one Jewish grandparent may in future be absorbed into the German body politic under certain conditions. This regulation benefits those who have one or two Jewish grandparents. But it could not have been successful if it had not been accompanied by the repeal of the Aryan regulations regarding private clubs and societies etc. But it has been made impossible for all time that the country should ever again be ruled politically or culturally by Jews. The more severe restrictions embodied in legal enactments or party regulations remain as they were. The German people will be robust enough to stand this admixture of foreign blood if they are in future protected from any further mixture. In special cases the Führer can grant exemption from the Act.

The National Socialist Party is the organization which represents the political life of the people. It is the only political organization in the German Reich; for the Act of July 15, 1933, stipulated that, the old party system having been superseded, no new parties should be formed. The task of the Party is to inspire each individual with a feeling of duty towards the nation. The Party does not owe its position to the State but exists in its own right. Actually the present State

existed ideally in the Party before it was established in fact. All the laws passed by the new State only carry into effect the principles of the Party and the Party holds the dominant position in political life. Yet, in spite of holding this dominant position, those Germans who are not members of the Party are not thereby precluded from playing their part in political life; for the people as a whole have become the repository of political power through the National Socialist Revolution. The position of the Party in relation to the State was further defined in a special Act providing for unification of the Party with the State. This Act was passed on December, 1, 1933. In practice the unity thus legally established had been already brought about through the appointment of the Führer as Head of the State and through a widespread personal union in Party and State offices. The Act supplies the legal basis of this practical union. But the Act did not aim as drawing a clear line of demarcation and division between the various spheres of activity carried on by the Party and the State respectively. Its aim was rather to open a way for combined work and collaboration. Externally the new positon was given formal expression in the appointment of the Führer's Deputy as Cabinet Minister without portfolio. As such his duties do not appertain to any one department of State. He devotes himself exclusively to Party affairs and supervises the influence it exercises on many of the internal affairs of the State. This combination of State and Party has given the National Socialist State its characteristic form. This may be observed in all departments of public life.

The Reich Leadership Law, subsequently amended and supplemented by the Reich Reconstruction Act of January 30, 1934, represented a rejection of the hitherto existing forms of representative democracy. It placed new emphasis on direct democracy by means of elections and plebiscites, the adoption of which was greatly extended. Formerly the mistake was frequently made of identifying democracy with peculiar institutions allied to it. For this reason people generally assumed that because Germany had abandoned the system of having several political parties and the system of legislation through parliamentary vote, she had thereby abandoned the democratic principle itself. But democracy signifies the sovereignty of the people and implies that political leaders should be responsible to and representative of the majority of the people. Accordingly if we consider the life of the German people from within we must admit that, independently

of the dispute about democracy or dictatorship, a fundamental change has taken place in Germany and that this change amounts to the establishment of a direct form of democracy. Nobody can say that the Führer has not recognized the sovereignty of the people as the supreme ruling principle in the State. He has repeatedly submitted his work to the judgment of the people and no one has more right to act and speak in the name of the people than he has. The democratic principle is also being put into practice through the fact that we are steadily developing a political leadership as an emergent from the mass of the people. A process of selection whereby really capable men belonging to the masses of the people can be appointed to positions of leadership without regard to origin or possessions, superior fitness only being taken into account. In his speech to the Reichstag on January 30, 1937, the Führer said: "By this process of selection, which will follow the laws of Nature and the dictates of human reason, those among our people who show the greatest natural ability will be appointed to positions in the political leadership of the nation. In making the selection no consideration will be given to birth or ancestry, name or wealth, but only to the question of whether or not the candidate has a natural vocation for those higher positions of leadership."

The Act of July 14, 1933, set forth the legal procedure for the carrying out of a plebiscite. It authorises the Reich Government to obtain the verdict of the people as sovereign power, not only on matters of legislation but also on other measures. If a particular law be the subject of a plebiscite the favourable verdict of that plebiscite is not merely an act of approval but is in itself a formal enactment. Within the first four years of the National Socialist regime there have been four Reichstag elections and three plebiscites. The subjects of the plebiscites were respectively Germany's withdrawal from the League of Nations, the repudiation of the military clauses of the Versailles Treaty, the assumption by Adolf Hitler of the office of President of the Reich, and the reunion of Austria and Germany.

The national unity brought about by the Revolution called for a corresponding unity of the State in accordance with the unity of the popular will. Thus a long-standing desire on the part of the best elements of the German people finds its fulfilment in constitutional law. The federal structure of the German Reich had its origin in dynastic rule which, even under the Second Empire, was sovereign in the respective federative states. The presidential decree of January 28, 1933,

already empowered the Government of the Reich to take the necessary steps, by the appointment of Reich Commissioners, for the maintenance of law and order in the various federative states. The first decisive step towards constitutional unification was the Act of March 31, 1933. This Act stipulated that the composition of the parliaments of the federative states and also of the local councils should be altered in accordance with the results of the Reichstag election. Therewith those bodies were given a uniform political direction and the entrusting of legislative power to the federative states according to the principles laid down in the Reich Leadership Act led to the unification of political leadership. The dissolution of the Reichstag on November 14, 1933, led automatically to the dissolution of the federative parliaments and the latter were not re-elected. The Reconstruction Act of January 20, 1934, legally abolished the federative parliaments. The Act of April 7, 1933, subordinated the activities of the federative governments to the Government of the Reich. A Governor was appointed for each of the larger federative states, such as Bavaria and Saxony, and the smaller federative states were divided into groups, a Governor being placed over each group. These Governors took over a number of duties formerly carried on by the federative governments. As representatives of the Führer, the Governors have to see that the work of the federative governments is directed towards consolidating the political unity of the Reich. One of the principal duties of the Governor is to appoint and dismiss prime ministers and other ministers of the federative governments. He draws up and promulgates the laws for his respective federative state. He appoints civil servants and may dismiss those not appointed by the Reich. The Act of January 30, 1934, transferred the last remnants of federative sovereignty to the Reich. In virtue of this measure the governments of the federative states became mere channels of Reich administration. Legislation in the federative states requires the approval of the competent Reich Minister. The administration of justice has been taken over directly by the Reich. But in spite of this centralization of all power in the hands of the Reich Government the position of a Governor is maintained in the Act of January 30, 1935. He is a link between the Reich and the federative authorities, and has been entrusted with some of the functions of the Reich Government so that, where necessary, special local conditions can be taken into consideration. In this way, notwithstanding a unification of the Reich, the traditional characters of the various branches of the German people will be maintained.

But the laws which have been promulgated up to now do not represent the final stage of constitutional development. They merely clear the way for further development. The formation of a new Constitution is to take place not from above, but from below, from the smallest cells in the community of the State, the Communes. They were therefore the first to receive their Constitution, embodied in the Local Government Act of 1935. But this Act is not only of interest for the political life of the Communes. In many respects it is an attempt to try out on a small scale things which may eventually be of importance for the Constitution of the State. The Local Community Act is thus one of the foundations of the National Socialist State, and on the ground prepared by it the new structure of the Reich will be raised. The provisions contained in the Local Community Act are derived from old and valuable German ideas of law. Its most important part was advocated by Baron von Stein, for the aim is to give the Communes a great measure of independence so that they can contribute to the fullest extent to the good of the whole nation. The form which was chosen for the realization of this purpose represents one of the first examples of the National Socialist idea of the Folk Community as applied to the administration. The Local Community Act does not therefore look upon the Commune as merely a technical and economic administrative unit, but regards it as a community formed according to the special conditions of the neighbourhood. The law encourages a sturdy independence in each district so that each citizen may, through his work in the narrower community of the Commune, cooperate sensibly and with a full sense of responsibility in the work of the larger community of the nation. He is therefore no longer a mere number among many millions, but has his special function in political life. For this reason the Commune is not regarded simply as a passive organ for carrying out the commands of the State, but within the limited framework of its district bears the responsibility for fulfilling those tasks which concern the National community. The nature of German local government can be summarized under the following three headings:-

1. In principle the Commune has to carry out its own tasks on its own responsibility. State supervision is limited to ensuring that the administration is according to the laws and in harmony with the general policy of the State. But this supervision cannot lead to the State taking over the organs of administration when it disagrees with the measures adopted by a Commune. The Supervisory Board can only prevent

the putting into force of decrees which run counter to the political aims of the Reich government: it cannot compel the local authority to carry out any particular measures. The Commune is left to solve its own problems in its own way. It is thus made sure that the State supervision will in no way hamper the initiative and enterprise of the local authorities. It must be left to the Commune to correct any mistakes which are made. In this way every member of the Commune is trained in political sound thinking.

2. In the person of the Mayor the Commune possesses its own particular organ for the forming of decisions. Neither he nor the Aldermen are appointed by the State. The Mayor is appointed by the Commune itself, and the Aldermen by the Deputies of the Party. The Local Community Act stipulates that those citizens are to be made Aldermen whose professions are representative of the Commune and its special problems. This means that only those who are in close touch with the life of the Commune and feel themselves therefore naturally responsible for its welfare are qualified to be Councillors.

3. The citizen of the Commune is called upon to play a part in the making of decisions and to cooperate in the administration. The new Act is not concerned to ensure that every citizen should once a year, by means of a secret vote, symbolically assert his responsibility for the local administration: it is concerned to bring about the actual collaboration of each citizen and to ensure that each member of the community shall bear his actual share of responsibility. The maintenance of certain technical forms is no guarantee that real self-government exists. The latter is guaranteed only when each citizen not merely has the right, but also the duty to cooperate in the administration. There are many honorary workers, and the Local Community Act requires that no one should refuse an honorary position. The extent to which this honorary collaboration has been introduced is shown by the following:— of the 51,311 Communes in Germany 96,03% are ruled over by Mayors whose posts are honorary. Out of a total 138,895 Aldermen 99,42% are honorary. There are in addition 291,234 Councillors and 305,248 Assistant Councillors; so that 777,973 citizens hold honorary positions whilst only 2,770 devote themselves to local government work as their chief profession.

Like the State, the Commune is built up on the principle of leadership. This principle does not merely mean that one person has the right

to lead, it implies also that this leader is the representative embodiment of the community. The position of leader implies responsibility for the community as well as authority in the community based on the work done for it. The Mayor of the Commune must not be content to administer the Commune according to the law and to increase its economic efficiency. He must not look upon the Commune merely as an economic unit, but must always bear in mind that it is made up of individual men and women who are his fellow-countrymen. He must therefore always seek their collaboration and not retire into his office to lead there a secluded existence. The Local Government Act presupposes a living contact between the Mayor and his Commune. Where such relations do not already exist the Act opens the way for their introduction. This is the basic element in the whole Act, and the life of the Commune is founded on it. The special work to be done in each Commune depends on local conditions, canal construction e.g., which goes beyond the limits of any individual Commune is undertaken by associations of Communes. Cultural policy presents a wide sphere of activity for the Commune. The encouragement of cultural activity is especially important for the Commune, because in local government it is easier than in State policy to establish contact with the individual citizen. The community feeling which grows from people living in close proximity is a good basis for cultural work. In the economic sphere the activity of the Commune is restricted by the fact that it may not enter into competition with the economic activity of its members. The community can only undertake work which individual initiative has failed to accomplish. The Commune is not on that account bound to confine itself to the provision of water and electricity. It can also devote itself to other tasks which are of service to the community. But commercial undertakings must not be carried on merely for their own sake and for the sake of the profit they may yield.

Since the number of towns with over 10,000 inhabitants has grown considerably, we find a professional bureaucracy side by side with the honorary workers. The ordered administration of these towns demands a high degree of legal knowledge such as the honorary worker cannot always be assumed to possess. But these professional officials too are subject to the Mayor. They act only as the auxiliaries of local government. This legal administration is not therefore in any sort of opposition to the political administration, but is rather an integral part of it. In every Commune a Deputy of the Party is

appointed, and this Deputy has to exercise his influence in such a way as to ensure, in accordance with the unity of Party and State, that the work of local government is in line with the general policy of the Reich. He must not interfere in matters of everyday administration. But even in cases where the Mayor is bound to act in collaboration with the Party Deputy the former is still held personally responsible for decisions suggested to him by the Deputy. If a measure taken by the Mayor is vetoed by the Party Deputy, and if the Mayor nevertheless still holds such a measure to be necessary, he must lay the matter before the higher departments of the State administration for their verdict. As far as finance is concerned the powers of local authorities are restricted. The extraordinarily widespread indebtedness of the period before 1933 made it necessary to strengthen the supervisory powers of the State. But the Act concerning Taxes on Real Estate and Commercial Transactions, of December 1, 1936, has already increased the financial independence of the Communes to a considerable extent. A further easing of the restrictions is planned for the future. The German conception of self-government does not regard the financial part as the decisive one. The essential is the development of community life, the inculcation of sound political ideas and a sense of political responsibility. The Local Government Act had laid down very strict provision to ensure that the economic policy of the Communes would be carried on in an orderly and sane manner. The Local Community Act also gave the Commune the right to make its own laws. The Commune may formulate and enact a special Constitution for itself, in accordance with the principles laid down in the Act, and this Constitution does not require the approval of the Supervisory Authority in so far as it does not affect the position of the Commune within the framework of the State.

Apart from the Local Community Act two further aspects of life within the State have been given their final form:- By the Act of May 21, 1935, military service was declared a service of honour to the German People. The Army, Navy and Air Force are the only bodies entitled to bear weapons for the State and they form a training school for soldierly qualities. Further, by the Act of June 26, 1935, general compulsory Labour Service was introduced. This institution plays a vital part in the life of the people as moulded by National Socialist ideas. Its purpose is to imbue every young German with a proper respect for manual work and with the right attitude to labour.

CRIME AND PUNISHMENT

In no field of German law was the desire for reform and for a revision of the existing code so strong as in the field of criminal law. As far back as 1900 the Congress of German Jurists had stated that the reform of the criminal code was one of the most urgent tasks which legislators had to fulfil. From 1909 to 1927 no less than five drafts were published; but the work remained nevertheless uncompleted. This continual discussion of reform and search for a solution led to a regrettable weakening in the position of the judicature and made the combatting of crime more difficult. For this reason we were compelled to direct our attention first of all to the reform of the criminal code which, more than any other part of the law, expresses the political attitude of the nation. In Autumn 1933 the Reich Minister of Justice, acting on behalf of the Führer, appointed a Commission for the drawing up of a criminal code; and this commission, after three years' work, completed a draft which has now been presented to the Reich Government for its consideration and approval. The draft itself has indeed not yet been made known in all its details, but the reports published about it have attracted considerable attention. Detailed opinions have been expressed on it, so that the underlying ideas are now generally known. The public discussion of the plans in the draft has done much to clarify people's ideas on the subject, so that the ground has been well prepared for the reception of the new law.

The plans of reform have already been anticipated by two Acts the consideration of which will enable us to get an idea of the present position of criminal law. Both are quite at variance with the principles on which criminal laws have been based hitherto. The latter sought not only to protect society, but also to protect the criminal against the arbitrary actions of society. The two new laws seek simply to protect society against every sort of criminal attack. The task of the criminal code must not be to safeguard the lawbreakers but only to contribute towards the preservation and safeguarding of the people and to combat those asocial elements which seek either to avoid their duties towards the community as a whole, or to offend against the interests of the people (Hitler, January 30, 1937). Above persons and things stands the community of the people and any breach of loyalty is a legal offence. The interpretation of the statutes according to the mere letter of the law had therefore to be abolished. The Supplementary Law of June 28, 1935, lays down that a punishment may be inflicted not only when the law prescribes it, but also when a sound sense of justice requires punishment for the act committed, and when the fundamental idea underlying a paragraph of the criminal code is applicable to such an act. Hitherto criminal law had compelled the judge to keep closely to the letter of the law. He had to do this because apart from the existing statutes no law was recognized. A judgment, therefore, which was not based on a strict interpretation of the words of a law necessarily appeared arbitrary. If, like National Socialism, one does not limit the law to the written statutes, one must admit that there may be cases not specified in the statute which are in effect just as criminal as acts enumerated therein and therefore ought to be punished.

The Supplementary Act of June 28, 1935, does not state that judgment should be based on the subjective feeling of the judge. It requires the latter to take account of the people's sense of justice and then to decide according to an objective standard—the root principles of the particular paragraph of the criminal code—whether actions similar to those punishable in the law have been committed. Only if such is the case he may inflict punishment, and this punishment must be such as is prescribed by the law. The judge is thus bound by the law; for every law represents a political decision of the Country's leaders, the judge having therefore only that amount of freedom which the law specifically allows. The law does not regard the people's sense of justice as being merely any particular view of law held by the masses, but rather as the sound and dispassionate judgment of the average citizen. The judge must therefore in future base his judgments on the law of the German People.

With this supplementary law the well-known principle that only those crimes can be punished which are exactly described in the law (nullum crimen sine lege) has been abandoned. This principle has been described as one of the foundations of criminal law in all States with European civilization, and for this reason it was also included in the Weimar Constitution. The study of comparative law reveals, however, that this view is incorrect. By "lege" we understand only statutory law and not judicial decisions and prescriptive law, however generally recognized the latter may be. In Great Britain most of the criminal law has been revised and regulated by statutes. But homicide is still

subject to Common Law. However strictly statutory law may be interpreted the principle "nullum crimen sine lege" cannot be maintained here. Apart from this the English Statutes, through the variety of their language and the rules of interpretation contained in them, give the judge an amount of freedom quite unknown in the German courts. But prescriptive law exists outside the United Kingdom, as for instance in three Swiss Cantons. In Denmark the criminal code goes so far as to admit the application of the law to cases analogous to those specified therein. In Norway, Sweden, and Finnland this manner of interpretation is indeed not explicitly permitted by the law, but in practice the analogy principle is applied in many important cases. It must, however, be admitted that the unrestricted use of analogy would open the way to all sorts of interpretation, so the judges themselves might finally evolve a law which would be remote from the life of the people and opposed to that popular sense of justice which should be the source of all unwritten law. For this reason German law provides for a combination of root principles contained in the written law and the popular sense of justice, so that these two factors may correct each other. A number of the Federal States of North America have also included in their Criminal Codes the provision that the application of the law must not be restricted to a literal interpretation, but must take account of the basic ideas of the law. The Criminal Code of the State of New York contains, in Article 675, the provision that anyone who commits acts against the person or property of another, who disturbs the peace or the public health, or offends against decency, may be punished, although the act be not included in the written catalogue of punishable acts. The claim that the administration of public law in all civilized states demands strict interpretation of the law and forbids analogy cannot be maintained. Even in those countries where this rule is to be found a law may be so loosely drafted or a crime so widely defined that in practice the judge is given complete freedom to decide as to what acts the law applies. Thus when the Supreme Court of Switzerland asserts that a person can only be prosecuted if he infringes some law there is no doubt that what is meant is that no other punishment may be inflicted but what is prescribed in the law. But this principle does not mean that those who draw up a law are compelled to give a detailed list of all offences which might be punishable under that law. They are, on the contrary, at liberty to substitute technical

names for groups of crimes or to use some general conception of crime. Thus in the application of a statutory law the conception of larceny may be interpreted by the judge according to his own views of law. This practice too is provided for in the Supplementary Law of June 28, 1935. But it has to be stated that the departure from the principle nullum crimen sine lege, does not mean abandomement of nulla poena sine lege. Only such kinds of punishments can be inflicted wich are known to the code.

The purpose of criminal law is to defend the community against all that may endanger it and therefore the Supplementary Law of November 24, 1933, contains provisions to combat habitual crime, and measures to safeguard the public. Formerly the criminal had to be released after he had served his sentence, even when it could be foreseen that his asocial disposition would lead him to abuse his liberty by committing further acts against the social order. How often did the unhappy mother of murdered children or violated girls ask the Court if it was really necessary to set the criminal free again to attack unfortunate creatures and inflict serious injury on the community. But this law enables the judge to sentence dangerous habitual criminals to a severer punishment than is prescribed for normal cases. The extent to which the punishment may be increased is stated in the Supplementary Law itself, A dangerous habitual criminal is a person who repeatedly—generally speaking, three times—commits an offence, and who shows from the general circumstances of the cases, that he not only habitually commits crimes but that he is, for the future as well as the present, a danger to society. These provisions therefore refer only to serious crimes, and not to such misconduct as habitual begging etc. Apart from increasing the punishment, the law prescribes preventive detention as a final means of protecting the public. This is not considered a penal measures. The crime itself is punished by imprisonment, but if that is not sufficient to protect the community for the future the criminal is interned in order to keep him from doing further harm. This internment lasts until the criminal is no longer held to be a danger to society, and a periodical examination ensures that the term is not extended beyond what is necessary. A further protective measure is the castration of dangerous habitual sex criminals, a measure which exists also in certain North American States and in Denmark. This is indeed a permanent and serious interference with the bodily integrity of the criminal, but it makes it possible to preserve him from

a complete loss of freedom or long internment. By means of this operation the urge to commit sexual offences is at anyrate so weakened that it no longer represents a source of danger. The Law also makes it possible to have a criminal transferred to a home for inebriates or to a labour settlement, if there is a prospect of educative methods being successful in combatting the criminal tendency. In the same way the Law provides that, in cases where the Court is bound to acquit the accused on account of insanity, it may order the accused to be kept in an asylum or home. The success of these measures for dealing with criminals is shown by the following figures: The year 1935 showed, in comparison to 1932, the following reduction in crime: Homicide 33.9%, robbery with violence 64.2%, arson 22.8%. (The reduction in the figures for larceny cannot be given as a basis for comparison since they have been affected by a number of amnesty laws.) Those who have had any experience of practical work in connection with the fight against crime can bear witness to the deterrent effect which these measures have on habitual criminals. The Supplementary Law of June 25, 1935, also contains a provision which, based on the idea of the national community, makes it obligatory on every individual citizen to render assistance in an emergency. Anyone who does not assist in cases of general emergency or accidents, although he was in a position to do so without endangering his own person, is liable to punishment.

Although these two supplementary laws have perhaps anticipated the most vital measures in the new Criminal Code, the latter will nevertheless contain so many innovations that we must give a short account of it here. The new code is above all a further step on the way towards the establishment of a pure principle of guilt. In doing so it takes account not only of the psychological connection between the criminal and his crime, but also ethical considerations. In future criminal law will hold that for guilt to be established it is necessary not only to demonstrate that the criminal knew what the results of a crime would be and intentionally agreed to them, or that the offence was brought about through a lack of reasonable care. It will be necessary to show also that the offender knew, or might have known, that he was doing wrong. A person may commit an act which has only just been made an offence by a newly promulgated law, or the circumstances may be so complicated that this may be a reason why he could not know he was doing wrong. It has always been considered unfair that

such a person should be punished merely because he was conscious of what he was doing at the time of the offence. Thus an old woman of German nationality who moved from Switzerland in order to settle down in Germany and knew nothing of the foreign exchange regulations was condemned for not having registered a small foreign account, although there was no doubt as to her ignorance of the legal regulations. Since the jurisprudence of the future will regard crime not merely as an offence against the explicit provisions of the law, but also as an attack on the community, as an act directed against the life of the nation, it will be necessary to take into account whether an offender himself recognized, or could have recognized, this aspect of his offence. Judges will indeed have to investigate very carefully the offender's claim that he was unconscious of having done wrong, and the claim will certainly not be allowed if it refers to acts which do not accord with the fundamental views of the nation on right or wrong. The claim that a criminal did not know that stealing and murder are forbidden will obviously not be entertained, but in the above mentioned case of the old lady the accused would be acquitted, which would only be in harmony with sound ideas of justice. The demand that the punishment of an offender requires not only that the latter knew what he was doing, but also that he knew he was doing wrong, represents an important departure from the doctrine of guilt as incorporated in the criminal law of all European States. It means in fact that in criminal law justice and ethics are no longer fundamentally separate. If we realize that the individual no longer exists apart from the community, and therefore can no longer have a distinct, and perhaps different ethical code, but is, as member of the community, the representative of its ethical views, then we must admit that this change in the conception of criminal guilt follows inevitably. Attempted crime will also be treated differently. According to the law existing hitherto, this was punished only in reference to serious crimes and then to a lesser degree than for the crime actually committed. An attempt is distinguished from a crime actually committed by the fact that the purpose of the crime has not been completely attained. Since the coming criminal law concentrates on the intention to commit a crime it must punish any attempt to do so and only admits a mitigation of penalty when the non-accomplishment of the crime can be shown to be due to a low intensity of will on the part of the criminal.

The second part of the draft, which describes the separate penal

offences, has also been extended to an important degree. The grouping has been carried out according to the importance of the object of the criminal act. First and foremost comes the protection of the people against crimes of treason, then comes the protection of national resources, of the nation's life (race and heredity, defensive power, labour power, national health), of the moral and spiritual ideals of the people (marriage and the family, morality and religious beliefs, respect for the dead, protection of animals), of commerce and national property, and further the maintenance of national institutions and order (leadership of the people, public order, justice) and the maintenance of honesty (offences against good faith, property, and criminal self-interest). In working out this new criminal law it was possible to draw on the results of decades of work done by learned jurists. But the fundamental provisions of former supplementary laws have also been incorporated in order to assure the uniformity of criminal law.

One of the most important parts of the new criminal code are the rules concerning penalties and the assessment of the penalties for each particular law. There has been no important change in the method of punishment. The future criminal law will also contain the death penalty, penal servitude and imprisonment. It provides, in addition, for fines, but makes these dependent on the financial circumstances of the individual, the daily income of the offender being taken as a basis for calculation. Penal arrest is abandoned. Imprisonment in a fortress as 'custodia honesta' is maintained. In laying down the separate penalties care has been taken in regard to punishments of extreme serverity, such as the death penalty, to provide the alternative of penal sevitude, so that the judge himself may have the possibility of commuting the death penalty in cases where the degree of culpability may not equal the objective wickedness of the crime. Above all the punishment inflicted in each individual case must depend on the actual guilt of the offender. In meting out punishment the judge must take into account the criminal intent, in cases of negligence the degree of carelessness and the indifference of the offender as regards the outcome of his offence, also the necessity of safeguarding the community, and the danger and injury caused by the offender, as well as his behaviour after the offence. Thus the law aims at imposing penalties which will correspond to each crime viewed as a whole, for only then can criminal law be an effective weapon for the protection of society. It is not intended to introduce the punishment of flogging,

for the effects of this punishment in other countries have not been such as to recommend its use.

The recasting of criminal law will also lead to new rules for the trial of criminal cases. The great emphasis laid on the community in criminal law will imply an extensive participation of the lay element in the administration of justice. The preliminary proceedings, which aim at clearing up the facts of the crime, will be placed in the hands of the Public Prosecutor. In important points he will have to cooperate with a judge. In the main trial the judge, who independently administers justice in the name of the people, is entirely free from the influence of the public prosecutor, both as regards the conduct of the trial and the handling of the case. The establishment of special courts for individual groups of crime which are specially important and delicate, e. g. political offences, will be maintained as permanent institutions, since their utility has been proved. A special degree and special kind of expert knowledge is required in dealing with these crimes, so that they can only be entrusted to judges trained in this special sphere. But work on the rules for the conduct of trials has only just begun, so that it is not as yet possible to say anything final on this subject.

LABOUR

Since 1933 there has been an energetic development in all aspects of the law dealing with labour. Labour organization has also been reformed through the Organization of Labour Act (January 20, 1934). Connected with that measure is a revised Labour Courts Act, as well as an Act concerning the Introduction of the Work Book (February 26, 1935) which provides the authorities with the data necessary for a planned distribution of labour. Rules governing labour contracts have also been laid down. The Act for the Protection of Wages in Homework (June 8, 1933), and the Homework Law (March 23, 1934) the essential part of which protects the worker from a lowering of wages, but which also makes it possible to prohibit homework tending to endanger life, health, and morality, further, the Hours of Work Act (July 26, 1934), the Act concerning Hours of Work in Bakeries and Confectioner's Shops (June 29, 1936). The eight-hour day is prescribed as a general rule. In concerns dangerous to health the time of work

must be reduced. In the sphere of labour protection we have regulations concerning work with compressed air (May 29, 1935), an Act regarding the Accomodation for Workers in the Building Trade (December 13, 1934), which provides for a healthy and adequate accomodation for workers (male and female) in coal mines, in roller and hammer works and in the glass industry (March 12, 1933). In addition to the reorganization of sickness, invalidity and accident insurance, social insurance as a whole has been reformed so as to ensure its efficient and economical working.

All these Acts can be easily fitted into the existing framework of this department of law, but merely to give their names does not tell us anything of the completely new attitude towards everything concerning labour law. The former labour law centred on the worker's associations and recognized these organizations for class-conflict as statutory corporations, thus giving them a place in the life of the State. But such associations are now completely at variance with the ideas embodied in the Labour Organization Law. Labour organization has undergone a fundamental change. The National Socialist State has not sought to make a compromise between the National Socialist and the capitalist organization of industry and labour. In place of the opposition of Labour and Capital, of employer and employed, the Labour Organization Act has set up the Works Community, which exists to serve the whole people. "To serve the highest interests of the community of the people they are not employers and employed, but labour deputies of the people." (Hitler at the Motor Exhibition, 1935). Work in every form is the fulfilment of a duty towards the community. For every German, work means the fulfilment of life's purpose. Therewith the nonsensical idea that manual work is on an inferior plane is finally refuted. The skilled worker at the boring machine is fulfilling a much more essential task than that of the clerk in the factory office, even though the latter may call himself a "brainworker". The value of any work done within the framework of the Folk-Community depends of its necessity for the life of the nation. The meaning of social honour lies in the fulfilment of this duty and in respect for the worker. Honour is the basis of our national life and the most precious possession of our people. It must, by its very nature, be all inclusive. It must penetrate every sphere of national life and be its basic principle. Community and Honour are inseparably bound together. It is therefore the foundation of the Works Community.

Labour is not regarded as being merely the physical capacity to perform certain tasks. Labour is an activity that is of value to the community. Labour as a whole is national labour, and each individual worker is only a member of the working Folk Community, helping to accomplish the task which the people as a whole have to fulfil. The laws of national life also require labour as a means of selection and of stimulating spiritual and moral forces. Labour is thus a community-forming factor. We cannot therefore consider labour and the circumstances and conditions under which it is carried out, matters such as the worker's safety, conditions of dismissal and holidays, working hours and wages, merely as subjects for private agreements which the community has to put up with, however harmful they may be. They must rather be regulated by the law which governs the life of the whole people, for they concern the whole community.

The work in each individual factory or business is therefore carried out for the common benefit of people and state, and its success or failure affects the fate of the whole nation. The position of the employer as leader of his business is subordinate to this task. His work in cooperation with the workers he employs is based not on mutual services rendered, but on the common work done for the nation. The employer's position as leader does not therefore mean that he is master in his own house and can do what he likes. It means rather that he is responsible for what his firm does for the community. The employer is bound to his workers by the fact that they are all participating in the labour of the nation. The essence of this cooperation lies in social honour, which means performances of duty, and respect for every kind of work. To offend against this principle of honour is to infringe the order of things embodied in the Labour Organization Act.

The form given to the Works Community necessitates that it should be self-governing. The organ of this self-government is the Mutual Trust Council, which consists of the leader of the firm and members elected by the workers. Its task is above all to assist in the drawing up of the works regulations, to see that suitable measures for protection against accidents are taken, and to strengthen mutual confidence.

The carrying out of this labour code is in the hands of the Labour Trustees who are appointed for each district. Their task is however not to use official means of compulsion to bring about the formation of Works Communities. A Community cannot be created by compulsion.

The Labour Trustee must, by using his personal influence, by education and advice of a general and particular nature, ensure that State compulsion is in general unnecessary. The activity of the Labour Trustee up to now has shown that although they have used, when necessary, the powers given them under the Act, they have avoided any serious interference which might have led to the failure of their efforts.

The Labour Trustees are supported in their work by the German Labour Front, which is the community of all working Germans. It is a social self-governing corporation. As such it took over the former social institutions of the workers and has extended and perfected them by means of a mighty organization. It further helps its members by improving the conditions under which they live and assists them in the event of unforeseen misfortunes. Since the organization includes employers as well as workers it can exercise a considerable influence on working conditions in the individual firms and on the formation of Works Communities in accordance with the principles laid down by the Labour Trustees. If there is deliberate and malicious opposition to the orders of the Labour Trustee, the latter may appeal to the Courts of Social Honour. Paragraph 36 of the Labour Organization Act gives the exhaustive list of actions which are punishable as offences against social honour. By establishing these courts the State has embarked on something entirely new. They have been entrusted with the task of elaborating through their own decisions a law of national labour. Misdemeanours enumerated in the Act are malicious exploitation of labour, offences against a person's honour, malicious endangering of industrial peace, breaches of general decrees issued by the Labour Trustee, and betrayal of commercial secrets by the members of the Labour Councils. But it is assumed that all such actions proceed from an asocial attitude of mind. The extent and effects of these penal regulations will be best shown by means of a few practical examples.

The Courts of Honour have passed sentences on account of malicious exploitation of labour for the following actions: the inadequate payment of work in violation of wage agreements, retention of wages, non-payment for overtime, excessive work, bad conditions of board and lodging, refusal of holidays, and breaches of important regulations for the avoidance of accidents. There is also the case of an employer who did not allow the workers to do their jobs in peace and quiet, but was continually bothering them and urging them on with abusive language.

An employer was condemned for an offence against honour because he refused to have the sick children of a worker taken to hospital in a neighbouring town in accordance with the doctor's instructions; he said he wished to spare his horses. His action in this case was not an insult to honour within the meaning of the Criminal Code, but an offence against the honour due to every member of the working community. In connection with the disturbance of industrial peace the following offences have been dealt with:—the provoking of labour disputes; demonstrations against the employer by misrepresentation; undermining of confidence in cooperation among the workers so as to disturb the proper working of the firm. In 1934, 64 actions were brought, in 1935 204, of which 164 were concluded by the end of the year.

The penalties which the Social Courts of Honour may impose are fines, reprimands and warnings. But they may also order removal of a worker from his place of work, or deprive an employer of his title of leader of the firm. In assessing the severity of the punishment, not merely the isolated action but the asocial attitude of the offender is to be considered. Of the 164 cases dealt with, 8 ended in acquittal, in 25 cases fines of under 100 Marks were imposed, in 45 cases fines of between 100 and 499 Marks, in four cases fines of between 500 and 999 Marks, and in four cases a fine of over 1000 Marks. Further, 21 reprimands and 19 warnings were issued. There has been one sentence of removal from the place of work, and in 9 cases the employer was deprived of his functions as leader of the firm.

If an offence is not only against social honour but against the community directly, the Labour Trustee can appeal to the ordinary courts, which may impose a fine or imprisonment.

In intimate union with the organisation of national work formed by the National Labour Act we find the planned distribution of labour throughout the whole country.

THE PEASANT AND THE LAND

In no sphere of law have such fundamental changes been made as in that regarding agriculture. Formerly part of the civil code had been devoted to this special department of national life. The changes which have taken place here are even more comprehensive and far-reaching than those brought about by the Labour Organization Act. They aim

at the reorganization and preservation of the farming class as one of the chief sources of national strength, and to do this a new organization, the Reich Agricultural Estate, has been founded. With the same end in view, agricultural indebtedness has been generally reduced, and the farms are protected against distraint; further, a marketing system has been set up which assures agriculture a market for its products at a reasonable price and at the same time is a guarantee that the German people will be able to live from the products of their own soil. The organizational and economic regulations are very extensive. They have in many cases taken over the functions exercised formerly by private institutions for the fixing of prices. But this material aspect too is subordinate to the national aim of maintaining and developing a prosperous peasantry. This aim is of decisive importance for the future of the nation. The farmer linked up with the soil cultivated by him is the never-failing source of national strength.

The Heredity Farms Act is the keystone for the whole law regarding the farming class. It is the foundation of all legal measures in this portion of the German Statutes. It proceeds from the idea that the farmer's family is linked up with the soil through their work. The law takes the farm as a living cell in the folk organism. The Heredity Farms Law does not legislate for the soil alone but for all that lives from it and grows on it too. It takes fields, farm homesteads and cattle as a natural unit in the centre of which stands the farmer himself. This union is regarded as a permanent one. Therefore the farm shall remain to the descendants or relatives as an inheritance in the hands of free German peasants. For this reason the Act makes it impossible to change the normal inheritance in a will. In general the eldest son inherits the farm. Female issue inherit only when there is no male issue possessing the necessary qualification for taking over the farm. The economic position of the farm is secured by a prohibition against mortgages and sales. A farm can only be regarded as an hereditary farm when it is capable of supporting a family and cannot be larger than 300 acres. In this way the measure furnishes a guarantee for the future, that as large a number as possible of medium and small farms shall be spread over the whole country. Independent Courts, called Heredity Farm Courts, ensure that these measures are carried out.

German agriculture has been further reorganized by a system of land settlement. Planned settlement on the land serves above all to increase the density of population in the more thinly populated parts

of Germany. It helps to strengthen the attachment of the people to the soil tilled by them, and it ensures that this soil shall yield sufficient food by reclaiming land from unfertile areas or by dividing up indebted estates not intensively cultivated and building new farms and villages on them. Each farm must have enough land attached to it to provide a livelihood for a family with several children. Variety in the size of farms is to be aimed at, and uniformity is to be strictly avoided. The most stable unit is the farm which can be run by the farmer and his family, and this farm is therefore specially favoured. But provision is also made for farm labourers since they are needed by the larger farms. And in accordance with local conditions artisans and institutions for common use (cooperative creameries for example) must also be provided.

But in order to put agricultural estates on a sound economic basis it was necessary to regulate indebtedness. The Act of June 1, 1933, makes it possible to reduce debts to a level in accordance with safety and to ensure their repayment from the yield without endangering the farmer's livelihood. There are two ways of doing this. On the one hand there is a procedure for reducing debts by which the creditor voluntarily grants a remission, making it possible to draw up a plan for paying off what is owed. On the other hand if a reduction of debts is necessary and the creditors are not willing to grant remissions, there is a procedure for compulsory adjustment. The debt regulation aims at freeing the owners of farms, woods and market gardens, who need relief from their debts to such an extent that, after paying for the upkeep of their families, they may pay off their debts according to the adjustment plan from the yield of their land. The plan for the abolition of debt is supplemented by protection from distraint for agriculture, so as to prevent property being confiscated and things beings auctioned which are necessary for the running of the farm.

The organization of the Reich Agricultural Estate is based upon the idea of self-government by corporation. The basic Act was promulgated on September 13, 1933, and a large number of supplementary decrees have ensured its proper application. Its aim is to bring together all the citizens of Germany who can be considered as belonging to one unit on account of their professional activity as farmers, as members of agricultural associations, as wholesale or retail dealers in agricultural products, as owners of land which can be used for agriculture, or as

engaged in exploiting agricultural products. The Reich Agricultural Estate has been given the task of training its members to a full sense of their responsibility towards the people and to become the solid foundation on which the nation can grow and maintain itself. It watches over professional honour which here too is the basic element of the community. It also has to care for its members from a social and cultural point of view. Since the Decree of December 8, 1933, the Reich Agricultural Estate is directed by the Reich Farm Leader who has at his disposal an administrative staff. In all important questions he is advised by the Reich Farm Council. The Reich Agricultural Estate is divided into Regional Associations, District Associations and Local Associations, so that in spite of the central organization, attention is paid to local conditions. Self-administration is carried out through these bodies, every member of which serves in an honorary capacity.

As a part of this professional organization the Reich Agricultural Estate is entrusted with the carrying out of the marketing scheme, the object of which is to guarantee the production of vital commodities, and on the other hand to protect the farmer from uncertainty as to whether he will be able to sell his produce. The marketing scheme provides a permanent market and at the same time ensures that the farms are properly and economically run. It regulates according to their nature and extent the utilization of agricultural products. These measures are not carried out exactly as in a planned economy in which orders and prohibitions tell the individual precisely what he is to do and what not to do. The method is rather to bring home to each single individual what the goal to be aimed at is, and to educate the rising generation to appreciate the tasks which have to be accomplished. Thus private initiative is in no way excluded.